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November 16, 2000

**Via Hand Delivery**

Mr. K. David Waddell  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

Re: Generic Docket Addressing Rural Universal Service Docket No. 00-00523

Dear Mr. Waddell:

Enclosed for filing, please find the original plus thirteen (13) copies of the Reply Brief submitted on behalf of the Rural Independent Coalition in the above-referenced docket. Copies are being served on counsel for all parties of record via facsimile this day.

Please contact me with any questions regarding this filing.

Very truly yours,

*Stephen G. Kraskin / ew*

Stephen G. Kraskin

Enclosures

cc: All parties of record

POSTED  
11/20/00

**Before the  
Tennessee Regulatory Authority  
Nashville, Tennessee**

<b>IN RE:</b>	)	
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<b>GENERIC DOCKET ADDRESSING</b>	)	<b>DOCKET NO. 00-00523</b>
<b>RURAL UNIVERSAL SERVICE</b>	)	
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	)	

**REPLY BRIEF OF THE RURAL INDEPENDENT COALITION**

**on behalf of**

**Ardmore Telephone Company, Inc.  
Ben Lomand Rural Telephone Cooperative, Inc.  
Bledsoe Telephone Cooperative  
CenturyTel of Adamsville, Inc.  
CenturyTel of Claiborne, Inc.  
CenturyTel of Ooltewah-Collegedale, Inc.  
Concord Telephone Exchange, Inc.  
Crockett Telephone Company, Inc.  
DeKalb Telephone Cooperative, Inc.  
Highland Telephone Cooperative, Inc.  
Humphreys County Telephone Company  
Loretto Telephone Company, Inc.  
North Central Telephone Cooperative, Inc.  
Peoples Telephone Company  
Tellico Telephone Company, Inc.  
Tennessee Telephone Company  
Twin Lakes Telephone Cooperative Corporation  
United Telephone Company  
West Tennessee Telephone Company, Inc.  
Yorkville Telephone Cooperative**

**"The Coalition of Small LECs and Cooperatives"**

**November 16, 2000**

**Before the  
Tennessee Regulatory Authority  
Nashville, Tennessee**

**IN RE:**

**GENERIC DOCKET ADDRESSING  
RURAL UNIVERSAL SERVICE**

**DOCKET NO. 00-00523**

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**REPLY BRIEF OF THE RURAL INDEPENDENT COALITION**

The Rural Independent Coalition (hereafter referred to as the “Coalition” or the “Independents”) respectfully files this Reply Brief in accordance with the schedule established by the Tennessee Regulatory Authority (“TRA” or “Authority”) at the Status Conference held in the above-referenced proceeding on October 31, 2000. The Coalition membership is comprised of 20 Independent telephone companies and cooperatives which collectively provide approximately 314,000 access lines to customers who reside and work within the more rural areas of Tennessee.

**Introduction**

The Authority has requested that the parties address three threshold issues:

**1. Does the TRA have jurisdiction over the toll settlement arrangements between BellSouth and the Rural Local Exchange Carriers?**

**2. Should the withdrawal of toll settlement agreements between BellSouth and the Rural Local Exchange Carriers be considered in the Rural Universal Service proceeding? If so, how should they be considered?**

**3. Is the state Universal Service statute, as enacted, intended to apply to rate of return regulated companies, as such companies are defined under state law?**

In its Brief, the Coalition explained that all three questions must be answered in the affirmative for both policy and legal reasons. The Coalition stated that public policy interests

require: 1) that the TRA holds authority over BellSouth's settlement arrangements for through rates for intraLATA toll service that has been provided by BellSouth and the Coalition Members; 2) consideration in this proceeding of the significant impact of BellSouth's proposed termination of the settlement agreements on the provision of universal service; and 3) application, as a matter of policy, of the state Universal Service statute to the rural rate of return regulated companies in order to meet the objective of universal service in rural Tennessee. The Coalition also set forth the legal grounds for an affirmative answer to each question. The Coalition noted that the Tennessee Code expressly gives the TRA authority over joint rates and requires the TRA to consider the impact that the toll settlements arrangements have on the Independent's existing universal service cost recovery and the impact that changes in those arrangements will have on future universal service cost recovery.

BellSouth Telecommunications, Inc. ("BellSouth"), the Southeastern Competitive Carriers Association ("SECCA"), and AT&T Communications of the South Central States, Inc. ("AT&T") also filed briefs. Before responding to their arguments regarding the three issues set forth by the TRA, the Coalition finds it necessary to correct a misstatement by AT&T of the origins of this proceeding. AT&T incorrectly claims that this proceeding was initiated by the Independents. Perhaps AT&T's claim is not wrongfully targeted, but simply based on misunderstanding. This proceeding is a follow up to Docket No. 97-00888, *Universal Service Generic Contested Case*, in which the TRA created a new universal service mechanism for non-rural companies in Tennessee. It was initiated by the TRA on July 14, 2000 by an Order requiring rural carriers to comment on the applicability to them of the TRA's rulings regarding non-rural carriers in Docket 97-00888.<sup>1</sup> BellSouth's unilateral decision to terminate its toll

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<sup>1</sup> Generic Docket Addressing Rural Universal Service, Docket No. 00-00523, Notice of Revised Comment Period (July 21, 2000); *see* Generic Docket Addressing Rural Universal  
(continued...)

settlements arrangements with the Independents is but one issue in Docket 00-00523. This issue was both initially identified and included in this proceeding by the TRA.

**Issue I: Does the TRA has jurisdiction over the toll settlement agreements between BellSouth and the Rural Local Exchange Carriers?**

In addressing this issue, BellSouth has mischaracterized the Independents' request as well as the TRA's authority to act on that request. BellSouth argues that "[a]lthough the TRA may have jurisdiction over the parties, it has no statutory authority to alter the pre-existing toll settlement agreements between BellSouth and the Rural Carriers."<sup>2</sup> The Coalition, however, does not ask the TRA to alter or to take some other action on the toll settlements contracts themselves. Indeed, BellSouth purports to have exercised its contractual right to unilaterally terminate those contracts.

The Coalition is not asking the TRA to alter or re-write the existing settlement agreements. Instead, the Coalition is asking the TRA to act pursuant to its jurisdiction, which BellSouth recognizes, and over interconnection arrangements<sup>3</sup> to define the interconnection arrangement between the Independents and BellSouth in the absence of the toll settlements contracts. More specifically, the Independents request that the TRA mandate that for an interim period the interconnection arrangements between the Independents and BellSouth will be on the same rates, terms, and conditions as were contained in the terminated toll settlements contracts.

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<sup>1</sup>(...continued)  
Service, Docket No. 00-00523, Order Opening Docket for Purpose of Addressing Rural Universal Service and Appointing Hearing Officer (July 14, 2000).

<sup>2</sup> BellSouth Br. at 1-2.

<sup>3</sup> AT&T agrees that the TRA has jurisdiction over the parties and over the interconnection arrangements between them, including rates. AT&T Br. at 4, 7-8. SECCA also agrees that the TRA has jurisdiction over the parties and their interconnection arrangements. SECCA Br. at 1-2.

That interim period will last only so long as necessary to permit the TRA to rule on the issues in this proceeding, including whether and to what extent the new universal service mechanism will compensate the Independents for the universal service cost recovery that is presently associated, as the TRA is aware, with the revenues the Independents receive pursuant to the current settlements contracts with BellSouth.

Most notably, BellSouth cites TCA 65-4-104, as did the Coalition, in describing the breadth and scope of the TRA's jurisdiction over the parties and matters at issue, but then wrongly concludes that this authority is irrelevant because "[t]he real question, however, does not relate to the Authority's jurisdiction *per se*, but rather to whether the Authority has the legal power to alter contracts between BellSouth and the rural carriers."<sup>4</sup> BellSouth misses the point. The Independents do not ask that the contracts be altered – BellSouth has acted unilaterally to terminate them. Instead, in the absence of the contracts, the Independents' ask the TRA to exercise its jurisdiction over the terms, conditions, and rates for interconnection between BellSouth and the Independents. Thus, the Independents seek interim settlements with BellSouth based on an order of the TRA rather than on the terminated contracts until the TRA has opportunity to finally rule on the issues in this proceeding.

Contrary to BellSouth's additional arguments with regard to Issue I, the Independents do not ask the TRA to become involved in the operation of a private contract<sup>5</sup> or to "alter or impair" any contract.<sup>6</sup> Rather, the Independents ask the TRA to act where no contract exists.

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<sup>4</sup> BellSouth Br. at 2. SECCA disagrees that the TRA lacks authority to alter the contracts and points to at least one instance in which the TRA's predecessor agency specifically required an alteration to the contracts and BellSouth did not question that agency's authority to do so under still valid statutes. SECCA Br. at 2.

<sup>5</sup> BellSouth Br. at 4.

<sup>6</sup> BellSouth Br. at 5.

**Issue II: Should the withdrawal of toll settlements agreements between BellSouth and the Rural Local Exchange Carriers be considered in the Rural Universal Service proceeding? If so, how should they be considered?**

While AT&T disagrees that there should even be a rural universal service proceeding, all parties agree that in such a proceeding the revenue losses to the Independents associated with BellSouth's termination of the toll settlement contracts are relevant to creation of a new universal service mechanism pursuant to TCA 65-5-207.<sup>7</sup> Importantly, BellSouth states that "[t]o the extent that a rural company takes the position that the termination or alteration of settlement agreements reduces the revenues available to support universal service, then this position could properly be considered in this proceeding."<sup>8</sup> This is exactly the position that the Independents have taken. They add only that in the interim period between termination of the contracts and the time that the TRA establishes a final rural universal service mechanism, the TRA should exercise its authority over the interconnection arrangements to require that interconnection occur on the same rates, terms, and conditions as were provided for under the terminated contracts.

BellSouth makes other arguments that have been fully addressed by the Coalition with respect to Issue I or that are more properly considered with respect to the merits of the universal service cost recovery mechanism proposed by the Coalition.

**Issue III: Is the state Universal Service statute, as enacted, intended to apply to rate of return regulated rural companies, as such companies are defined under state law?**

AT&T and SECCA argue that state universal service funding does not apply to a rural carrier unless and until that carrier elects to permit competition in its service area. They

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<sup>7</sup> AT&T Br. at 8-9; SECCA Br. at 3; BellSouth Br. at 8 - 9; and Coalition Br. at 5.

<sup>8</sup> BellSouth Br. at 8-9.

inaccurately cite TCA 65-5-207(a) to support this proposition.<sup>9</sup> That section, however, does not support their proposition. TCA 65-5-207(a) states:

Universal service, consisting of residential basic local exchange telephone service at affordable rates and carrier-of-last-resort obligations must be maintained after the local telecommunications markets are opened to competition.

This statutory language expresses the legislative goal of ensuring that universal service continues in a competitive local exchange market. It does not in any way mandate that universal service mechanisms can only be examined after a carrier actually experiences competitive entry. Such an approach would be both imprudent and contrary to federal statutory requirements as well as the intent of the state legislature. Instead, the legislative goal is to prepare for the coming of competition by revising the existing universal service mechanisms in such a way as to ensure the continued provision of universal service when competition does in fact arrive. It is noteworthy that the Legislature referred to the telecommunications markets generally rather than referring to individual carriers' markets. Under AT&T and SECCA's interpretations, the TRA would have been in error to revise the universal service mechanism for any non-rural carrier that had not in fact experienced competitive entry. Such an interpretation does not follow from any reasonable reading of the words of the statute.

There is simply nothing in the statute to prevent or deter the TRA from addressing universal service in rural areas. Further, Section 254 of the Telecommunications Act supports both the right and the obligation of the TRA to address rural universal service.

Moreover, the rural markets have been opened to competition. Both Chapter 408 and the 1996 Act "opened the telecommunications markets to competition" within the meaning of TCA 65-5-207(a) and both expressly provide for opening the rural markets to competition. Further, the Independents have actually long experienced the effects of competition in the form of lost

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<sup>9</sup> SECCA Br. at 3; AT&T Br. at 10.



toll and access revenue.

The SECCA and AT&T position on this issue is parochial and represents their competitive perspective of universal service funding as a cost recovery mechanism offered only in response to competition. Concern for maintaining universal service precedes competitive issues by a substantial margin. The advent of competition, in general, has initiated the public interest need to consider changes in the required and appropriate forms of the universal service mechanism.

It is ironic that SECCA and AT&T complain about the Coalition proposal for a rural universal service when the funding requirement, which will be shared by all Tennessee telecommunications users, will arise because of reductions in the charges assessed by the rural carriers for originating and terminating interconnection to their networks. The Coalition has proposed a rate design with lowered originating and terminating charges in order to foster reasonable statewide toll rates that will be available to all Tennessee consumers.

## **Conclusion**

All the parties who filed briefs agree that the revenue decrease experienced by the Independents as a result of BellSouth's unilateral termination of toll settlements contracts is relevant to creation of a new rural universal service mechanism. The Independents ask that the TRA exercise its unquestioned authority over the parties and the rates, terms, and conditions of their interconnection arrangements to require that interconnection between the Independents and BellSouth continues on the same rates, terms, and conditions as were provided for in the terminated toll settlements contracts. This would only be for an interim period of time until the TRA has opportunity to create a new rural universal service mechanism that accounts for the lost revenue associated with the contract terminations. There is nothing in the applicable statutes to

suggest that it is inappropriate for the TRA to take up the issue of rural universal service or to suggest that price regulated carriers are somehow exempt from the TRA's authority over these issues.

Respectfully submitted,

**The Tennessee Rural Independent  
Telephone Company Coalition**

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## CERTIFICATE OF SERVICE

I hereby certify that on November 16, 2000, a copy of the foregoing document was served on the parties of record, via the method indicated:

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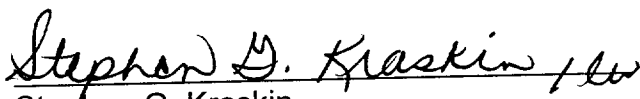
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